

BUSINESS LAW SECTION

CORPORATIONS COMMITTEE

COMMITTEE MEETING MINUTES FOR OCTOBER 5, 2001

**Marriott Hotel, Los Angeles
Friday, October 5, 2001
10:00 a.m.**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section (the "Section") of the State Bar of California (the "Bar") was held at the Marriott Hotel, Los Angeles, California, October 5, 2001. Attendance was as follows:

MEMBERS PRESENT:

Bishop, Keith Paul
Carpenter, John C.
Crandall, Nelson D.
Dyer, James K., Jr.
Erickson, Teri Shugart
Fitzpatrick, Timothy J.
Fotinos, James F.
Hiraide, Mark T.
Lucas, Carol
Lyon, Eileen
Martin, B. Keith
McAllister, Brian D.
Piazza, Ethna M. S.
Pike, David M. (via telephone)
Schai, Randall Brent
Walther, James R.
Wertlieb, Neil J.
Weiser, Daniel J.
Wojtas, Nancy

MEMBERS ABSENT:

Caplan, David S.
Cheatham, Robert W.
Dravis, Bruce
Hazen, Steven K.
Ribas, Cynthia

LIAISONS PRESENT:

Robert Stansell (via telephone)
Todd Vlaanderen, Secretary of State
Lawrence Harasym, NASD

These Minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to Members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda which are not described in these Minutes.

I. ADMINISTRATIVE MATTERS

1. Self-Introduction of Members.

2. Opening Remarks and Announcements.

Neil Wertlieb summarized the major accomplishments of the Committee in 2000-2001 year and encouraged members to carry on this tradition in the 2001-2002 year.

The Committee discussed the tentative schedule of meetings and logistics of video-conferencing. The Committee also discussed the conference call procedure used at the suggestion of the State Bar to accommodate potential problems with airline schedules. The sense of the Committee was to continue to encourage in-person participation in the Committee meetings.

Mr. Wertlieb encouraged members to review their contact information on the Committee Roster and submit corrections and changes.

3. Approval of Minutes.

With minor changes, the minutes of the September 7, 2001 meeting were approved.

II. LIAISONS' REPORTS AND DISCUSSIONS

1. BLS Executive Committee Liaison Report.

Mr. Stansell reported that there had not been a meeting of the Executive Committee since the last meeting, and he had nothing to report other than to provide reminders to the co-chairs of the deadlines for submittal of the Meeting Schedule, Roster and Budget, October 30, 2001 and November 30, 2001, respectively.

2. Secretary of State Report.

Mr. Vlaanderen reported that the Secretary of State is currently working on improving consistency among reviewers in providing comments to filings.

3. NASD Report.

Mr. Harasym reported that a new broker-dealer rule was issued on October 10th regarding timeliness of filing reports. NASD also has begun a new web-based program for monitoring activities of brokers. As a result, firms may be getting more calls inquiring of changes in trades. NASD hopes to spot and handle issues prior to the annual broker reviews.

Keith Bishop discussed the Department of Corporation's power to certify NASDAQ, which is tied to a \$3 minimum bid. He further explained that while NSMIA will supercede state law as to stock, warrants and options are not within the scope of the NSMIA exemption and therefore need to be qualified under California securities laws unless an exemption is available.

4. Liaisons to Other Committees.

a) Appointment of Liaisons.

Due to Nelson Crandall's extensive time commitment with regard to the opinion report, Steve Hazen will replace him as Liaison to the Partnerships and LLCs Committee. Jim Fotenos agreed to replace David Pike as Legislative Liaison for the coming year, in view of David's becoming Secretary of the Committee. All of the Committee's other Liaisons to other committees from the 2000-2001 Committee year agreed to serve again.

b) UCC Committee Liaison.

James Dyer reported that the UCC Committee's agenda for the first meeting this year addressed organizational issues. He further reported that the UCC Committee is likely to approve at its next meeting the Model Control Agreement for Deposit Accounts that the UCC Committee has been developing. The UCC Legal Opinions Task Force also reported that its opinion report will address solely Article 9 of the UCC. The UCC Legal Opinions Task Force has also decided to proceed with its report now rather than await an updated Tri-Bar Report.

c) Health Law Ad-Hoc Committee.

The Section has officially formed an Ad-Hoc Committee on Health Law. Carol Lucas reported that its first meeting will be held Friday, October 12. There are 16 members comprised of lawyers in state government and those representing payers, providers, and public interest groups. The Committee on Health Law will focus its major efforts on educational programs and legislative issues. The first Educational Program will be on forming a professional corporation and highlighting differences between general corporations and professional corporations. The Committee also plans to publish a Guide to Organizing Professional Corporations, much like this Committee's Guide to Organizing California Corporations. Carol Lucas agreed to serve as the Committee's Liaison to the Committee on Health Law.

III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS

1. Report of Legislative Liaison.

David Pike reported as legislative liaison that there has been no legislation of interest to the Committee and no new action on legislation the Committee has been tracking.

2. SB 399 - Corporate Conversions.

Messrs. Fitzpatrick, Wertlieb and Bishop have volunteered to carry forward this legislative item that the Committee began working on last year. Bob Stansell agreed to prepare a report to those new members now responsible for this item.

3. 25102(o) Emergency Regulations Comments.

Tim Fitzpatrick agreed to serve with Suzanne Graeser on a proposed working committee with the Department of Corporations in developing new regulations to implement SB 400 with regard to extending the 25102(o) exemption to include option plans of limited liability companies and modifications to the existing regulations relating to corporate stock options. Appointment of additional members of this working group from the Committee will be postponed until Suzanne Graeser reports that the Department is ready to proceed with this working committee.

4. Section 710 Sunset on Supermajority Approvals.

David Pike reported that the Section 710 legislative proposal was with Larry Doyle and, after a sponsor is found, will be introduced in the 2002 legislative session.

IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

1. Secretary of State Fax Filings.

The Committee discussed the importance of developing fax filing procedures. The Secretary of State's current position is that a third party service would be required to be used if fax filings are to be used, so that the Secretary of State's office would not be responsible for monitoring them.

V. WEB SITE PROJECTS

1. Posting of Law Firm Communications/Advisories to Clients.

Eileen Lyon reported that she has not received any responses from the law firms that were among the first group of firms to receive the request. Eileen will send the list of the contact names and firms so that Members can speak to the contacts at their own firms.

2. Recent Developments Page.

Nancy Wojtas reported on the recent development reports added to the web site since the last meeting.

3. Committee Proceedings.

After a discussion among the Members, the Committee approved posting the approved final minutes of the Committee's Meetings in addition to the meeting agendas that are already being posted on the web site.

VI. OTHER PROJECTS

1. Opinion Task Force.

Nelson Crandall led a discussion of his draft working outline for the Opinion Report and, based on input from the Committee, agreed to revise the draft outline. Among the issues discussed were issues of how to address opinions on laws of other states, such as Delaware; whether to highlight differences from or compare the report to other reports such as the Tri-Bar Report and the Restatement; and whether to address Securities Act of 1933 Act opinions. There was also discussion of the Opinion Report Task Force formed by the Bar's Executive Committee and its role in reviewing reports of any committee of the Section with regard to remedies opinions. The Committee agreed this would be a major project of the Committee for the year.

2. 25118(b) Definition of Aggregate Evidences of Indebtedness.

Dan Weiser reported that Section 25118(b) provides an exemption for transactions over a specific dollar amount but that it does not provide any guidance on whether a lender can aggregate transactions for meeting the exemption. He suggested that legislation be proposed to address this issue.

3. Section 166.

Consideration of this issue regarding when the Section 166 test applies with regard to an upstream guarantee (at the time it is issued or at the time it is attempted to be enforced) was tabled.

4. Finance Lenders Law.

Keith Bishop will put together a memorandum summarizing the issues for venture capital investors posed by this statute. Ethna Piazza, Mark Hiraide, and Brian McAllister volunteered to review Keith's memo and discuss the issue before next

meeting and make a formal proposal to Committee.

5. Investment Advisor Exemption.

The Department is considering several comment letters it has received on the topic of exempting general partners of venture capital funds from registration as investment advisors. Keith Bishop and James Fotenos volunteered to continue the Committee's work with the Department on this issue.

6. Discussion of New and Continuing Projects for the Coming Year.

Keith Bishop reported on the progress of his continued review of the Blue Sky Guide. Eileen Lyon reported on the continued progress of work on the Guide for Forming California Corporations. She noted that the Committee terms of two people who were working on the Guide ended, so she needs at least two people to fill those positions and seeks two to three more people to help with the overall review. Teri Erickson, Mark Hiraide and Tim Fitzpatrick volunteered. Eileen agreed to prepare a proposed schedule for completion of the Guide.

VII. ADJOURNMENT

The meeting was adjourned at 12:35 p.m.

/s/ Ethna M. Piazza
Ethna M. Piazza
Acting Secretary

Corporation Committee Meeting Minutes

